

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

Case No. 05-20726-CIV-COHN/SNOW  
03-20441-CR- COHN

FELIX SUAREZ,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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**ORDER GRANTING MOTION FOR RECONSIDERATION**

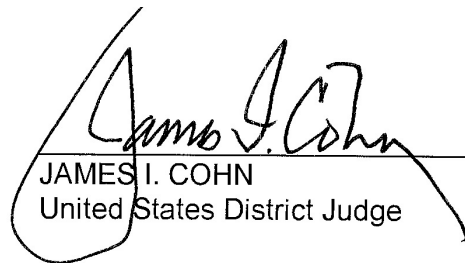
**THIS CAUSE** is before the Court upon Movant Felix Suarez's Motion for Reconsideration [CR DE 223]. The Court has considered the Motion, and is otherwise duly advised in the premises.

This Court's previous Order [DE 50], denying Movant's request to be re-sentenced with consideration given to the Booker and Blakely decisions, was based on a review of the case law that indicated the Eleventh Circuit had not yet considered the issue: whether a Court following the re-sentencing procedure set out in United States v. Phillips, 225 F.3d 1198 (11th Cir. 2000) should simply re-impose the same sentence the Movant previously received, or should instead re-sentence the Movant taking into account the more recent Booker and Blakely decisions. Movant argued that it would be plain error to re-impose a sentence without giving consideration to Booker and Blakely, but this Court concluded that no precedent existed to support this argument, and that it was bound by the Eleventh Circuit's decision in Phillips directing district courts to simply re-impose the same sentence on the Movant for the purpose of putting the Movant back

in the same position in which he would have been absent his counsel's failure to file a timely appeal. However, in the instant Motion for Reconsideration, Movant brings to the Court's attention a very recent Eleventh Circuit decision, where the court held in a similar case that district courts should consider the effect of Booker and Blakely when re-sentencing a Movant pursuant to the procedure set out in Phillips. See United States v. Zavala, No. 06-16589, 2007 WL 1875055 (11th Cir. 2007). In light of this new case, it seems clear that the Court should consider the Booker and Blakely decisions in re-sentencing the Movant in this case. Accordingly, it is hereby

**ORDERED AND ADJUDGED** that Movant's Motion for Reconsideration [DE 223] is **GRANTED**. The previous Order denying Movant's request [DE 50] is **VACATED**, and the Court will consider the effect of the Booker and Blakely decisions when re-sentencing the Movant.

**DONE AND ORDERED** in Chambers at Fort Lauderdale, Broward County, Florida, on this 29th day of August, 2007.

  
JAMES I. COHN  
United States District Judge

Copies provided to:

Counsel of record